Supreme Court, U.S.
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No. 97-2072

In The

Supreme Court of the United States

October Term, 1997

TURBOMECA, S.A., and TURBOMECA ENGINE CORPORATION,

Petitioners,

v.

KYONG JU BARNETT, Individually and as Next Friend of JESSIE MORGAN BARNETT and MIA KYONG BARNETT, minor children; JAMES S. BARNETT, SR.; WANDA BARNETT; and STATE OF MISSOURI,

Respondents.

On Petition for Writ of Certiorari to the Missouri Court of Appeals, Western District

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Because the State of Missouri only has an indirect interest in the petition's first question presented, the State will not address that question specifically in this brief. The State has a direct interest in the second question presented, as well as in a third question, not contained in the petition but a prerequisite to considering the second question:

II. Did the State of Missouri violate the Excessive Fines Clause of the Eighth Amendment when it defined, by statute, a punitive damages remedy that requires a portion of the punitive damages to be paid to the State's Tort Victims Compensation Fund?

III. Does a defendant, against whom a punitive damages award is levied, have standing to challenge the constitutionality of a state statute that does not affect the amount that the defendant must pay, but only the disposition of the funds?

REASONS FOR DENYING THE WRIT

Certiorari is not warranted to decide whether the Excessive Fines Clause of the Eighth Amendment applies to punitive damages in a civil case between private parties when the lower courts have not addressed the merits of this issue, the State has not had the opportunity to brief this issue to the lower courts, and the petition is sought by a party whose liability is not directly affected by the allegedly unconstitutional statute.

1. The petition urges this Court to grant certiorari to consider whether Missouri's law allocating a portion of punitive damages to the State, Mo. Rev. Stat. § 537.675 (1994), violates the Excessive Fines Clause of the Eighth Amendment. Yet, none of the lower courts have addressed whether the Excessive Fines Clause applies to the punitive damages awarded in this case – a civil law suit litigated by private parties.

Petitioners included this issue, along with numerous others, in their ninth point on appeal to the Missouri Court of Appeals. But in their brief on appeal, they devoted only one footnote to the question.[1] And that footnote merely said that the case "must be analyzed with regard to the Excessive Fines Clause"; it did not argue that the Missouri statute allocating punitive damages awards among plaintiffs and the state actually violated that clause.[2] It is hardly surprising, then,

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[1] Brief for Appellants in the Missouri Court of Appeals Western District at 87.

[2] Since 50% of any punitive damage award goes to the State of Missouri, this case must also be analyzed with regard to the

that Respondent Barnetts' reply brief did not respond to this footnote.

Given the lack of attention to the Eighth Amendment issue in the briefs, it was natural that the Missouri Court of Appeals acknowledged this issue only to the extent that it paraphrased the arguments raised in petitioners' brief. Appendix to Petition for Writ of Certiorari at 4-5. The Court did not actually address the Eighth Amendment issue.

Because the lower courts have not considered this Eighth Amendment issue, this Court should not accept certiorari. As it has held in the past, this Court should not review an issue without first having the benefit of developed arguments by all interested parties and lower court opinions squarely addressing the issue in the first instance. *Yee v. City of Escondido, California*, 503 U.S. 519, 537-38 (1992).

2. That is particularly true where, as here, none of the parties before the lower courts had a clear personal interest in defending the statute now being challenged. The statute did not directly affect the liability of the defendants in the

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> Excessive Fines Clause of the Eighth Amendment to the United States Constitution. Browning-Ferris Industries, 109 S.Ct. at 2914-16. See Colonial Pipeline Co. v. Wright Contracting Co., 365 S.E.2d 827 (Ga. 1988) ($5 million punitive damage award violated Georgia constitutional prohibition against excessive fines), appeal dismissed, 488 U.S. 805 (1988).

Id. at n.27.

suit, for it only addressed the allocation of punitive damages *after* award. Certainly, the plaintiffs had no reason to defend the statute, for without it they would have a claim to the entire punitive damages award. Only the State of Missouri (and its Tort Victims Compensation Fund) would be directly affected by a holding that the Missouri law was invalid.

But the State of Missouri has not had the opportunity to brief this issue to the lower courts. The State was not a party at the trial court. Nor was it a party in the appellate courts. The State became a party only *after* the Missouri Court of Appeals had issued its decision and the Missouri Supreme Court declined to review it. Thereafter, the mandate of the Court of Appeals issued and respondents accepted it, agreeing to the appellate court's remittitur in lieu of a new trial. On remand, the trial court joined the State of Missouri as an indispensable party, on motion from petitioners, because of the State's right to share in the punitive damages award. Thus, the State became a party only after all of the events and decisions that could be the subject of the petition. This Court should defer any consideration of the constitutionality of Mo. Rev. Stat. §537.675 (1994) to a case in which the constitutional issues have been briefed by all concerned parties -- including the State -- and decided below.

3. Closely related to the lack of interest of petitioners in addressing the Eighth Amendment issue below is the serious question concerning their standing to raise it here. If the statute were held to be invalid, the portion of the statute allocating payment to the Tort Victims Compensation Fund would be severed and the punitive damages award would stand. The amount of punitive damages that petitioners must pay would not change. It would be inappropriate to grant certiorari to permit petitioners to argue an Eighth Amendment question that is, to them, either of entirely academic and hypothetical interest or, more likely, is a ruse by which to

catch this Court's attention when petitioners' real purpose is to attack the amount of the punitive damages award itself.

If the Court considers petitioner's first question (regarding the amount of the punitive damages award) as justifying its attention, it should nonetheless deny the petition as to petitioners' second question (regarding the excessive fines clause). And if the Court considers the second question as meriting attention, despite the absence of its consideration below, the Court should also consider the implicit question of petitioners' standing.

CONCLUSION

For the reasons stated, this Court should deny the Petition for Writ of Certiorari filed by Turbomeca, S.A. and Turbomeca Engine Corp.

Respectfully submitted,

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